IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2015

Coram

The Hon'ble Mr.Justice R.Mahadevan

W.P.No.8507 of 2004
and
W.P.M.P.No.9991 of 2004

M/s.Karuppasami Agencies,
rep. by its Proprietor
chennai-10

...Petitioner

Versus

1. The State of Tamil Nadu
rep. by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chennai - 3.

3.Commercial Tax Officer (FAC)
Ayanavarm Assessment Circle,
Chennai - 108.

....Respondents

Prayer

Writ Petition, filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorari, calling for records pertaining to the clarification in Lr.No.K.Dis.Acts, Cell 1/47148/2003, dated 1.10.2003, issued by the second respondent as far as the petitioner is concerned and quash the same.

For Petitioner : Mr. S.Chandrasekaran

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

This writ petition has been filed seeking to call for records pertaining to the clarification in Lr.No.K.Dis.Acts, Cell 1/47148/2003, dated 1.10.2003, issued by the second respondent as far as the petitioner is concerned and quash the same.

2. Learned counsel for the petitioner fairly submits that the issue involved in this writ petition is squarely covered by the decision of the Hon'ble Division Bench reported in [2013] 59 VST 86 (Mad) (SGS Petro Organic Limited vs. Commercial Tax Officer, Ayanagaram Assessment Circle and another) wherein the Honourable Division Bench of this Court has held as follows:

> "An entry by virtue of Section 59(1) made into the Schedule stands on the same footing as an entry by virtue of legislative amendment. The question of discrimination does not arise as the Legislature had chosen to make an entry in the Schedule specifying the commodities under two different heads and so liable for different levies. The dealers are bound to pay the surcharge and resale tax also applicable. The object of the amendment to the Schedule incorporating that the superior kerosene oill is separate and liable to be taxed higher than the domestic kerosene. The object behind the amendment was to curt the smuggling and adulteration of diesel or petrol.

The Honourable Division Bench dismissed the appeal holding that the State Government suffers heavy loss of revenue on account of Sales Tax evasion on diesel which was around 28 per cent as against 13.8 per cent on superior kerosene oil.

3. Following the same, this writ petition is also dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Secretary, State of Tamil Nadu
Commercial Taxes Department,
Fort St. George, Chennai.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chennai - 3.

3.The Commercial Tax Officer (FAC)
Ayanavarm Assessment Circle, Chennai - 108.

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